

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 94004

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-173-93

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
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Governor's Signature

Nevada State Environmental Commission

Classification [] Proposed [] Adopted By Agency [XX] Temporary [] Emergency []

Brief description of action: Petition 94004 (LCB R-173-93) permanently amended NAC 444.842 to 444.960. The amendments modify NAC 444.8632 to adopt by reference 40 CFR Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 279 as those parts existed on July 1, 1993 and to reflect the current costs for purchasing those parts of the federal regulations. Part 279 contains the new federal used oil management regulations. This petition adds new state regulations that would restrict the mixing of used oil with other products and wastes.

Authority citation other than 233B: NRS 459.485, 459.490 and 459.500

Notice date: December 22, 1993, December 29, 1993 and January 12, 1994

Hearing date: January 20, 1994

Date of Adoption of Agency: January 20, 1994

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 94004
LCB R-173-93**

The following statement is submitted for adopted permanent amendments to Nevada Administrative Code Chapter 444.842 to 444.960 by the State Environmental Commission.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 94004 was noticed three (3) times: December 22, 1993, December 29, 1993 and January 12, 1994 in the Las Vegas Review and Reno Gazette-Journal newspapers. Comments and hearing minutes may be secured from the Office of the State Environmental Commission located in Carson City, Nevada at 333 W. Nye Lane, Room 128. No comments were received from the general public regarding this petition.

2. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1. Comments and hearing minutes may be secured from the Office of the State Environmental Commission located in Carson City, Nevada at 333 W. Nye Lane, Room 128. Public comments were also solicited through the "Nevada Waste Reporter" in November, 1993. Meetings were held with private industry; Nevada Mining Assn, State Waste Oil Haulers, etc in June and July of 1993.

Comments were received from Nevada Power Company and Barrick Goldstrike Mines. Nevada Power Company's comments focused on the limitation on the usage of sorbent materials to cleanup oil spills. In addition they objected to portions of the record keeping requirements for Conditionally Exempt Small Quantity Generator's who mix hazardous waste with their used oil.

Comments from Barrick Goldstrike Mines was concerned that the proposed regulation would treat all used oil as a hazardous waste. Barrick believed that no RCRA (Resource Conservation and Recovery Act) exclusion or exemption would apply to used oil.

Comments were also received from the Nevada Mining Assn. These comments supported those submitted by Barrick Goldstrike Mines.

3. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulations were adopted at the SEC hearing on January 20, 1994 with no further public comment beyond that outlined in part 2. Based upon public and business input the regulations were amended.

4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
 - (b) Both immediate and long-term effects.
- a. As a federally mandated program, adoption of the petition is not anticipated to have any additional adverse economic impact on Nevada businesses. The state is required to adopt these federal regulations to maintain its authorization for RCRA hazardous waste program.
 - b. There are no immediate or long-term economic effects on regulated sources. There are no immediate or long-term economic effects on the public. The amendments adopted by the Environmental Commission, specifically the used oil regulations, may result in decreased costs and increased options for disposing of do-it-yourself waste oil.

5. The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for enforcement of the proposed regulation.

6. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

There are no other state or government agency regulations which the proposed amendments duplicate. Authorization allows the State to implement the RCRA program in lieu of the federal government, eliminating duplicative regulatory authority.

CODIFIED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R173-93

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted; matter underlined is amended language.

AUTHORITY: NRS 459.485, 459.490 and 459.500

Section 1. Chapter 444 of the NAC, is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *"Conditionally exempt small quantity generator" means a generator who generates 100 kilograms of hazardous waste or less in a calendar month. A generator is a conditionally exempt small quantity generator only during the calendar months that it generates 100 kilograms of hazardous waste or less.*

Sec. 3. *"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of the use is contaminated by physical or chemical impurities.*

Sec. 4. 1. *The mixing of used oil with hazardous wastes is prohibited except for the following:*

(a) Mixtures of used oil and a hazardous waste which is hazardous solely because it exhibits the characteristic of ignitability specified in 40 C.F.R. § 261.21 and is not listed in subpart D of 40 C.F.R. Part 261, by a conditionally exempt small quantity generator who generates and mixes less than 5 gallons of such waste per calendar month with its used oil, if the resulting mixture does not exhibit the characteristic of ignitability specified in 40 C.F.R. § 261.21.

(b) Mixtures of used oil and waste gasoline, if the resulting mixture does not exhibit any of the characteristics of hazardous waste specified in subpart C of 40 C.F.R. Part 261.

(c) Mixtures of used oil and waste diesel fuel. If such mixtures will be used for mining activities relating to extraction, express written approval must be granted by the division before such use.

2. *The mixing of used oil with products is prohibited except for the following:*

(a) Mixtures of used oil and diesel fuel. If such mixtures will be used for mining activities relating to extraction, express written approval must be granted by the division before such use.

(b) Mixtures of used oil and other fuels if such mixture will be used for the recovery of energy pursuant to 40 C.F.R. Part 279.

(c) Mixtures of used oil and sorbent materials when used only to manage isolated leaks and spills [of less than 25 gallons of used oil or 3 cubic yards of contaminated sorbent materials]. Such mixtures must not contain any free liquid. [Any use of sorbent materials, or any other materials, to dilute used oil before disposal is prohibited.]

3. *Conditionally exempt small quantity generators who mix hazardous waste with used oil pursuant to paragraph (a) of subsection 1 shall maintain records of the mixing for a minimum of 3 years. The records must include the quantity and description of the hazardous waste mixed with the used oil, the amount of used oil to which the waste was added and the date the mixing took place. In addition, such conditionally exempt small quantity generators shall maintain records on site of all purchases of solvents that upon disposal would meet the definition of ignitability under 40 CFR Part 261 for a minimum of 3 years. The records maintained pursuant to this subsection must be readily available for review.*

Sec. 5. 1. Mixtures of used oil with hazardous wastes that are exempted pursuant to subsection 1 of section 4 of this regulation that are being recycled or burned for the recovery of energy must be managed in accordance with the requirements of 40 C.F.R. Part 279. If such mixtures are to be disposed, they must be managed in accordance with the requirements of 40 C.F.R. Part 262.

2. Mixtures of used oil and hazardous wastes that are not exempted pursuant to subsection 1 of section 4 of this regulation must be managed as a hazardous waste in accordance with the requirements of Subtitle C of the Resource Conservation and Recovery Act and NAC 444.850 to 444.8746, inclusive, and sections 2 to 6, inclusive of this regulation.

3. Except as otherwise provided in subsection 4, mixtures of used oil and products that are exempted pursuant to subsection 2 of section 4 of this regulation that are being reused or burned for the recovery of energy must be managed in accordance with the requirements of 40 C.F.R. Part 279.

4. Mixtures of used oil and sorbent materials that are exempted pursuant to paragraph (c) of subsection 2 of section 4 of this regulation may be managed in accordance with the requirements of NAC 444.570 to 444.748, inclusive, and sections 2 to 87, inclusive, of Regulation No. R051-93, adopted by the state environmental commission and filed with the secretary of state on November 8, 1993.

5. Mixtures of used oil and products that are not exempted pursuant to subsection 2 of section 4 of this regulation must be managed as a hazardous waste in accordance with the requirements of Subtitle C of the Resource Conservation and Recovery Act and NAC 444.850 to 444.8746, inclusive, and sections 2 to 6, inclusive, of this regulation, unless and until a determination has been made pursuant to section 6 of this regulation that the waste is not hazardous.

Sec. 6. Mixtures of used oil with wastes that are determined not to be hazardous are subject to regulation as used oil pursuant to 40 C.F.R. Part 279. Documentation of the determination that the waste was not hazardous must be maintained on site and available for inspection while the waste is being generated for a minimum of 3 years. Generators who mix wastes that are not hazardous with their used oil shall maintain records of the mixing. The records must include the quantity and description of the waste added to the used oil, the amount of used oil to which the waste was added and the date the mixing took place.

Sec. 7. NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, and sections 2 to 6, inclusive, of this regulation, and section 1 of [this regulation,] Regulation No. R045-93, adopted by the state environmental commission and filed with the secretary of state on October 29, 1993, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.8565, inclusive and sections 2 and 3 of this regulation have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.8565, inclusive, and sections 2 and 3 of this regulation, the words and terms defined in 40 C.F.R. § 260.10, as it existed on July 1, [1991,] 1993, have the meanings ascribed to them in that section.

Sec. 8. NAC 444.8632 is hereby amended to read as follows:

1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, and sections 2 to 6, inclusive, of this regulation, any person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements (and may rely upon applicable exclusion or exemption under) of 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, [and] Parts 260 to 270, inclusive, and Part 279, as those provisions existed on July 1, [1992,] 1993, which, except as modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The state environmental commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, [and] Parts 260 to 270, inclusive, and Part 279, to interpret these

sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, for the following prices:

- (a) Volume 40 C.F.R. Part 2..... [~~\$25~~] **\$31**
- (b) Volume 40 C.F.R. Part 124..... [~~27~~] **34**
- (c) Volume 40 C.F.R. Parts 260 to 270, inclusive, and 279..... [~~29~~] **36**

Sec. 9. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, ***and any reference to these sections and parts,*** are not adopted by reference:

- (a) Sections 2.106(b) and 2.110;
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.12(e), 124.14(d), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) **Section 261.5(j);**
- (e) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(l), 265.1(c)(4), 265.149, 265.150 and 265.430;
- ~~[(e)](f)~~ Section 266.111;
- ~~[(f)](g)~~ Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44; [**and**
- (g)**
- (h)** Sections 270.1(c)(1)(i), 270.60(b) and 270.64 **[.]; and**
- (i) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10 (d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73 (b)(2).**

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

- (a) Part 124 is adopted with the following exceptions:
 - (1) Delete all references to appeals to the Administrator in section 124.5(b);
 - (2) Delete all references to "EPA-issued permits" and insert in its place "permits issued by the department," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
 - (3) Delete all references to "when EPA is the permitting issuing authority" and insert in its place "when the department is authorized to issue a permit," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi); and
 - (4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to "UIC," "PSD" and "NPDES" are deleted.
- (b) Section 260.2(a) is adopted except that "the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)" must be replaced with "NRS 459.555 and any regulations adopted pursuant thereto."
- (c) Section 260.33(a) is adopted except that "in the region where the recycler is located" is deleted.
- (d) Section 260.33(b) is adopted except that "and this decision may not be appealed to the Administrator" is deleted.
- (e) Section 260.41(a) is adopted except that "or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal" is deleted.
- (f) Section 261.4(e)(3) is adopted except that "in the Region where the sample is collected" is deleted.
- (g) Section 262.11(c)(1) is adopted except that ", or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21" is deleted.

(h) Sections 262.42(a)(2) and 262.42(b) are adopted except that "for the Region in which the generator is located" is deleted.

(i) Sections 264.18(c) and 265.18 are adopted except that "except for the Department of Energy Waste Isolation Pilot Project in New Mexico" is deleted.

(j) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that "If the facilities covered by the mechanisms are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" is deleted.

(k) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that "or Regional Administrators if the facilities are located in more than one Region" is deleted.

(l) Section 264.151 is adopted with the following exceptions:

(1) Delete all references to "(of/for) the Regions in which the facilities are located;" and

(2) Delete "an agency of the United States Government" from the second paragraph of the trust agreement.

(m) Part 270 is adopted except that all references to "interim authorization" are deleted.

[(n) Section 279.21(a) is adopted except § "279.10(b)(2)(ii) and (iii)" is deleted and replaced with "Section 4 of this regulation."]

[(o)] (n) Section 279.40(c) is adopted except "unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste" is deleted.

END OF PETITION 94004 (R-173-93)